IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10292 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE M.R.SHAH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HEIRS OF BAI MANGU

Versus

PATEL SANKABHAI SHANKERBHAI H

Appearance:

1. Special Civil Application No. 10292 of 1993

MR MC SHAH for Petitioner No. 1-3

MR AP RAVAL for Respondent No. 1

Mr. LR Poojari, AGP for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE M.R.SHAH

Date of decision: 02/04/2004

ORAL JUDGEMENT

The petitioners had preferred the present Special Civil Application under Article 227 of the Constitution of India challenging the judgment and order passed by the Deputy Secretary (Appeals), Revenue Department, State of Gujarat in quashing and setting aside the judgment and

order dated 8th January 1993 passed by the Collector, Mehsana by which the Deputy Secretary had set aside the Entries No. 224 and 606.

2. That the petitioners are the owners of agricultural lands bearing Survey Nos. 354/1, 354/2 and 354/3 of Village Malasan, Taluka-Vijapur, District-Mehsana. Originally, Survey No. 354 was admeasuring 5 acres and 26 gunthas of land. However, the said Survey No. 354 was partitioned amongst brothers before 60 years and at the said partition Southern portion of the said survey number admeasuring 2 acres and 33 gunthas was allotted to the share of respondent No.1's predecessor-in-title Shri Shankarlal Haribhai and the remaining half Northern portion admeasuring 2 acres and 33 gunthas had gone to the share of one Dalabhai Baktibhai who was Predecessor-in-title of the petitioners. It is the case of petitioners that the portion which was allotted to the share of Dalabhai Baktibhai was the Northern portion of Survey No. 354 and it was subsequently subdivided amongst heirs of Dalabhai Baktibhai and at the said partition, Survey No. 354/2 had gone to the branch of petitioner No.2 and Survey No. 354/3 had gone to the branch of petitioner No.2 and according to the petitioners the aforesaid Survey Nos. 354/1, 354/2 and 354/3 belong to the petitioners.

It seems that in 1954 proceedings for promulgation of the record were initiated for the first time by the Mamlatdar and at the time of said promulgation, Survey No. 354/1 and Survey No. 354/2 were found to be of the ownership of the petitioners and Survey No. 354/3 was found to be of the ownership of the respondent No.1 and accordingly Entries were made in Village Form No.6 and also in the Record of Rights.

3. From the record, it is borne out that the respondent No.1 has also filed a civil suit being Regular Civil Suit No. 83 of 1988 in the Court of learned Civil Judge (JD), Vijapur against the petitioners and according to the petitioners in the said Suit he has also categorically made a statement to the effect that Survey No. 354 originally admeasuring 5 acres and 26 gunthas of land and there was a partition and on partition 2 acres and 33 gunthas of land had gone in the share of 1st respondent predecessor-in-title Shankerbhai Haribhai and remaining Northern portion of Survey No. 354 admeasuring 2 acres and 33 gunthas had gone to the share of Dalabhai Baktibhai, i.e., predecessor-in-title of the petitioners. However, in the said suit, the dispute seems to be with regard to boundary and the aforesaid suit is filed for

possession of 8 gunthas of land which it seems to be in dispute.

4. Inspite of the aforesaid facts, the respondent No.1 had preferred an appeal before the Deputy Collector, Mehsana challenging the correctness of the aforesaid entries which was as a result of promulgation of the record and the Dy. Collector, Mehsana has rejected the said application on appeal on the ground that as the appeal was filed against promulgation of record, he has no jurisdiction.

5. That being aggrieved and dissatisfied with the said order passed by the Deputy Collector, Mehsana, the respondent No.1 had preferred Revision Application/Appeal before the Collector, Mehsana under Rule 108 (5) of the Gujarat Land Revenue Rules and the Collector, Mehsana, by his judgment and order dated 8th January 1993 dismissed the said appeal by holding that the entries No. 224 and 606 have been made on 14.4.1954 and the appeal has been preferred on 3rd November 1992 and therefore the same was filed after a period of 37 years after promulgation of record, and also on other grounds.

6. That being aggrieved and dissatisfied with the said judgment and order passed by the Collector, Mehsana, in RTS Appeal No. 4/92, the respondent No.1 had preferred Revision Application before the learned Special Secretary (Appeals), Revenue Department, Ahmedabad, which was numbered as Revision Application No. LRD 6/1993 and the learned Special Secretary (Appeals) by judgment and order dated 21st September 1993 had allowed the Revision Application by quashing and setting aside the entries No. 224 and 606 and also quashing and setting aside the order passed by the Collector, Mehsana dated 8.1.1993 and further passed an order directing to mutate the name of respondent No.1 only in the Record of Rights.

7. That being aggrieved and dissatisfied with the aforesaid judgment and order dated 21.9.1993 passed by the learned Special Secretary (Appeals) in LRD 6/1993 the petitioners had preferred the present Special Civil Application under Article 227 of the Constitution of India.

8. Shri M.C. Shah, the learned advocate appearing on behalf of the petitioners had submitted that the judgment and order passed by the revisional authority in allowing the same and quashing and setting aside the entries No. 224 and 606 after a period of almost 45 years, is required to be quashed and set aside as the

entries which were made in the year 1954 could not have been set aside by the revisional authority after unreasonable period. It is further submitted on behalf of the petitioners that the judgment and order passed by the Collector was right to the effect that after a period of 37 years of the promulgation order the entries cannot be set aside, more particularly when the civil suit is pending between the parties and ultimately the entries are required to be made on the basis of the final outcome of the civil dispute. It is also further submitted on behalf of the petitioners that the revisional authority, i.e., learned Special Secretary has materially erred in quashing and setting aside the entries No. 224 and 606 on the assumption and presumption that the names of the petitioners were mutated in the Record of Rights wrongly and the entry with regard to the petitioners as agriculturists is wrongly made and though there is no evidence on record by which it can be said that the entries at the time of promulgation were wrongly made.

9. On the other hand, Shri BM Manguikia, ld. advocate appearing for Shri A.P. Raval on behalf of respondent No.1 had supported the judgment and order passed by the revisional authority by which the entries No. 224 and 606 are set aside. He has submitted that the learned Special Secretary was right in holding that the names of the petitioners were wrongly entered into the Record of Rights at the time of promulgation and therefore he has prayed that the petition be dismissed with costs.

10. I have heard the learned advocates on behalf of the parties. The partition took place prior to 1954 and proceedings for promulgation of the record were initiated in the year 1954 and on the basis of the said promulgation the necessary entries,i.e. 224 and 606 were made in the year 1954. The respondent No.1 who is the distant brother of the petitioners had challenged the said entries which were made on the basis of promulgation in the year 1954, only in the year 1992 and that is after a period of almost 37 years. For all these 37 years the aforesaid entries were continued and no objections were ever raised by the respondent No.1. Not only that but it seems that in the Regular Civil Suit No. 83/88 filed by respondent No.1 in the Court of learned Civil Judge (JD), Vijapur and the very respondent No.1 had categorically admitted the factum of partition and had never challenged the factum of partition and the petitioners/predecessor-in-title of the petitioners being the owners of land which had gone to the share except the question with regard to boundary to the extent of 8

gunthas of land. Under the circumstances, it is not open for the respondent No.1 to challenge the aforesaid entries No. 224 & 606 after a period of 37 years and the Collector, Mehsana was right in dismissing the appeal on the ground of limitation as well as on the ground that the Civil Suit is pending between the parties.

11. The learned advocate on behalf of the petitioners had strongly relied upon the judgment of the Hon'ble Supreme Court in the case of Raghavnatha Vs. State of Gujarat, reported in 12 GLR Page 156 and also other Judgments reported in 2000 (1) GLH Page 580, 1997 (4) GCD Page 234; 1997(6) SCC Page 71; and 1994(1) GLR Page 822 in support of his argument to the effect that the revisional powers are required to be exercised within a reasonable time. In the present case, as stated above, the appeal was filed by the respondent No.1 challenging the entries which have become final in the year 1954, after a period of 37 years. Under the circumstances, the learned Special Secretary was not right in cancelling the entries which have become final in the year 1954 and ought not to have quashed and set aside the order passed by the Collector refusing to interfere with the entry after a period of 37 years. Under the circumstances, the judgment and order passed by the learned Special Secretary is required to be quashed and set aside.

12. From the judgment and order passed by the revisional authority, i.e., learned Special Secretary, it seems that the learned Special Secretary has held that the names of the petitioners were wrongly entered into in the Record of Rights and they were wrongly shown as agriculturists at the time of promulgation,but considering the entire judgment it seems that the said finding is given by the learned Special Secretary without there being any evidence on record and only on the basis of presumptions and assumptions. It was not open for the learned Special Secretary to give a finding with regard to the partition in revenue proceedings which were for the purpose of considering the mutation entries. The question with regard to partition was not before him and therefore there was no reason for the learned Special Secretary to decide validity of the partition. The learned Special Secretary ought to have appreciate that the entries in the Record of Rights have primarily a fiscal value and they are only for the purpose of showing the possession for the purpose of recovery of the revenue. Entries do not confer any right, title or interest and if the civil suits are pending between the parties and/or if there is any dispute with regard to right, then the only remedy is to file a Civil Suit and

to get appropriate relief from the civil court and the necessary entries are made thereafter on the basis of outcome of the civil suit. In the present case,, as stated above, even the Civil Suit is pending between the parties and therefore entries will have to follow hereinafter on the basis of outcome of the aforesaid civil suit which is pending between the parties. Under the circumstances also, it was not open for the learned Special Secretary to interfere with the entries which have become final in the year 1954 by his judgment and order dated 21.9.1993 and ought not to have set aside the said entries and ought not to have set aside the order passed by the Collector, Mehsana, dated 8.1.1993.

13. For all the aforesaid reasons, the present Special Civil Application is required to be allowed. The judgment and order passed by the learned Special Secretary (Appeals), Revenue Department, State of Gujarat, dated 21.9.1993 passed in Revision Application No. LRD 6/1993 is hereby quashed and set aside and the judgment and order passed by the Collector, Mehsana dated 8.1.1993 in RTS Appeal No. 4/1992 and the Entries No. 224 and 606 with regard to the lands in question are hereby restored. Rule is made absolute to the aforesaid extent with no order as to costs.

rmr. [M.R. Shah, J.]